

REMARKS

Claims 6 through 14 have been rejected by the Examiner. Claims 6 through 14 are pending.

Rejection under 35 U.S.C. §103:

The Examiner has maintained the rejection under 35 U.S.C. §103(a) as being unpatentable over Krueger et al. U.S. Patent No. 6,478,751 in view of Pyles U.S. Patent No. 5,669,882. Applicant respectfully traverses this rejection for the following reasons.

The Examiner repeats the rejection, asserting the following conclusions:

- 1) that one of ordinary skill in the art would have modified the Krueger system to include a curved tip needle;
- 2) that one of ordinary skill in the art would have modified a proximal end to include indicia.

The Examiner further alleges that the prior art and present invention “are all related to the field of inserting hollow members into a patient in order to introduce or collect a material from the body.” This is not a “field” as the Examiner erroneously believes. The Examiner’s overreaching assertion that everything fitting the description of “introducing or collecting something from the body” is related for purposes of obviousness is overreaching and analogous to asserting that any invention having to do with the ocean is related to one of ordinary skill.

The Examiner argues that “the matter with which Pyles deals would have logically commended itself to an inventor’s attention.” Applicant disagrees with this assertion. Logically and scientifically, Pyles is an epidural spinal needle structured for penetration through *soft* tissue. As Applicant pointed out in the previous response, the

Krueger system and present invention are structured for penetration through solid cortical bone (*hard* tissue) to obtain a bone marrow sample. Logically, the soft tissue usage needle would not be contemplated by one of ordinary skill as “commending itself” to a hard tissue application through the cortex. Scientifically, one of ordinary skill would have contemplated substantive difference in structural integrity requirements between the two applications.

These reasons point to the absence of a motivation that would fairly suggest their combination to one of ordinary skill. As to the indicia argument, Applicant reminds the Examiner that the essence of the invention does not exclusively reside in the presence of proximal indicia. In sum, the Examiner has not presented a combination of references that can fairly support a rejection on obviousness grounds.

Given the above, the claimed invention is not unpatentable over these references within the proper meaning of 35 U.S.C. §103. This rejection should, therefore, be withdrawn.

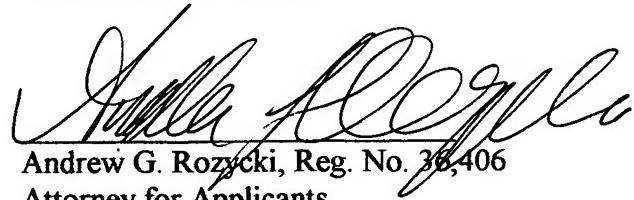
Conclusion:

In light of the above amendments and the accompanying remarks, it is believed that the application is now in condition for allowance, and prompt notification to that effect is earnestly solicited. The Examiner is invited to contact the undersigned to

discuss the application on the merits if it is believed that such discussion would expedite
the prosecution.

Respectfully submitted,

Dated: June 13, 2006



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